IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

***Application of*:**	**Gerald H. Ablan**
***Serial No*:**	**09/644,411**
Examiner:	**Calvin L. Hewitt II**
Art Group:	**3621**
***Reference No.*:**	**4A02.1-010**
***Application Filed*:**	**23 August 2000**
***Title*:**	**Auction Management System**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia

18 July, 2007

Customer No. 35725

Sir:

This Amended Appeal Brief is filed electronically on the date indicated below in the Certificate of Transmission within one months from the Notification of Non-Compliant Appeal Brief dated 19 June 2007, which set a one-month period for filing the Appeal Brief extendable under 37 C.F.R. 1.136. Applicant therefore submits that no fee is due in connection with this Amended Appeal Brief. Nevertheless, the Commissioner is authorized to charge any feed deemed due and credit any refund to Deposit Account Number 50-2591.

The Notification indicates two amendments are required to the Appeal Brief: Item 2 -- identification of the status of all claims and the identity of which claims are involved in the appeal; and Item 4 -- mapping of claims 67, 73, and 82 to the specification by page and line and to the drawings. Those items are included in the Amended Appeal Brief set forth below.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark electronically via the EFS-Web on 18 July 2007.

/Michael J. Mehrman/

Michael J. Mehrman, Reg. 40,086

REAL PARTY IN INTEREST:

The real party in interest is Marketworks, Inc., Assignee of the application.

RELATED APPEALS/INTERFERENCES:

This is the only pending appeal of the subject application. Applicant is not aware of any pending interferences concerning the application.

STATUS OF CLAIMS:

Claims 67-85 are pending and currently stand rejected under 35 U.S.C. §103(a). Claims 67, 73 and 82 are independent claims. The status of the claims is as follows:

Claims 1-66 are canceled;

Claims 67-85 are currently pending (previously presented) and stand rejected;

Claims 67-85 are involved in the present Appeal.

STATUS OF AMENDMENTS:

The last amendment prior to the Notice of Appeal was filed on 24 August 2006 in response to the Office Action dated 24 May 2006. Applicant filed a Notice of Appeal on 2 February 2007 in response to the Final Rejection dated 6 November 2006. An amendment subsequently filed on 11 April 2007 has been entered to correct certain informalities in the pending claims.

SUMMARY OF CLAIMED SUBJECT MATTER:

Claims 73-81 are directed to an electronic auction monitoring report with alterable tracking fields for identifying the status of post-sale activities. Claims 82-85 are directed to a menu-driven utility for creating, storing and posting auction submissions. Claim 67-72 are combination claims that recite features of the auction monitoring report and features of the menu-driven utility in combination with an auction consolidation engine.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

Whether Claims 67-69, 71-75, 77, 79-82 and 85 are patentable over Rackson et al., U.S. Pat. No. 6,415,270 ("Rackson") in view of Conklin et al., U.S. Pat. No. 6,141,653 ("Conklin") under 35 U.S.C. §103(a); and whether Claims 70, 76, 78, 83 and

84 are patentable over Rackson and Conklin in further view of Robinson et al., U.S. Pat. No. 5,915,022 ("Robinson") under 35 U.S.C. §103(a).

More specifically, this appeal requires the resolution of three substantive points of contention concerning the scope and content of the cited references:

(a) whether Rackson discloses or suggests a menu-driven utility for creating, storing and posting auction submissions as recited in Claim 82;

(b) whether Rackson in combination with Conklin disclose or suggest an auction monitoring report with alterable tracking fields for identifying the status of post-sale activities as recited in Claim 73; and

(c) whether Rackson in combination with Conklin disclose or suggest an auction management system that includes a menu-driven utility for creating, storing and posting auction submissions; an auction monitoring report with tracking fields for identifying the status of post-sale activities; and an auction consolidation engine as recited in Claim 67.

MAPPING OF INDEPENDENT CLAIMS TO SPECIFICATION AND DRAWINGS

The following description refers to the subject application ("App.") with page and line references in page/line format (e.g., App. at page 10, line 12 = App. at 10/12). Element numerals shown on the figures are indicated in bold within parentheses.

Claim 67:

Referring to Fig. 1, claim 67 is directed to a computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus, referred to as the auction consolidator **(20)** in the illustrated embodiment, to implement an auction management system **(10)**. See App. at 8/21-9/19. The full set of computer-executable instructions are described with reference to the flow charts of Figs. 5-15. See App. at 12/15-25/15.

Referring to Fig. 4, the auction management system includes a menu-driven utility, in this example a module referred to as flashpost **(30)**, which is configured to assemble auction submissions, stored them in an ad queue **(64)**, and submit them to an auction site **(12)**. Flashpost **(30)** automatically assembles the auction submissions from libraries containing predefined advertisement templates **(50, 60)**, product images **(48)**, textual descriptions **(62)**, and user-specified auction parameters entered into the

advertisement templates, and stores the auction submissions in the electronic auction submission library or ad queue **(64)**. See App. at 4/11-17 and 11/20-12/14. Fig. 2 shows the reusable components **(46, 48, 50)** used to create the auction submissions stored in a relational database **(40)**. See App. at 9/20-23.

Referring to Figs. 16 and 17, the auction management system includes an electronic auction monitoring report **(1600, 1700)** configured to display a plurality of auction management records **(1602)** within a common view, wherein each auction management record displays information **(1603, 1604, 1606, 1608, 1610, 1612, 1614)** pertaining to a respective auction submission. The auction monitoring report also includes tracking fields **(1620, 1702, 1704)** identifying post-sale activities to be performed in connection with the sale. See App. at 5/4-14 and 24/1-17. Referring to Fig. 17, the auction monitoring report **(1700)** shows that the views of the tracking fields **(1702, 1704)** associated with individual auction records are alterable to indicate a completion status of its associated post-sale activity. See App. at 25/16-24.

Referring to Figs. 2-3, the auction management system includes an auction consolidation engine **(20)**, which in this example includes modules referred to as the finalizer **(28)**, the parser **(32)**, and the auction monitor **(32)**. The auction consolidation engine **(20)** is configured to post the auction submissions to one or more electronic auction sites **(12)** in accordance with the user-specified auction parameters, automatically revisit the auction sites, extract updated auction information pertaining to the auction submissions, update the auction monitoring report with the updated auction information, determine that a successful auction submission has resulted in a sale to a buyer, and update the auction management record for the successful auction submission with closed auction data associated with the sale. See App. at 2/23-5/3; 9/20-11/19. The computer implemented process is also described in detail with reference to Figs. 8 and 9. See App. 4/11-17 and 16/27-17/24.

Claim 73:

Referring to Fig. 1, claim 73 is directed to a computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus, referred to as the auction consolidator **(20)** in the illustrated embodiment, to implement an auction management system **(10)**. See App. at 8/21-9/19. The full set of computer-

executable instructions are described with reference to the flow charts of Figs. 5-15. See App. at 12/15-25/15.

Referring to Fig. 5, the auction management system creates a plurality of auction submissions for offering items for sale at auction **(502)**, which is shown in greater detail on Figs. 6-9. See App. at 13/28-17/24. The auction management system also posts the auction submissions to one or more auction sites **(504)**, as shown in greater detail on Fig. 10, and monitors auctions **(506)**, as shown in greater detail on Fig. 11. See App. at 17/25-20/19. Referring to Figs. 16 and 17, the auction management system also displays an auction monitoring report **(1600, 1700)** comprising a plurality of auction management records **(1602)** displayed within a common view, wherein each auction management record displays information **(1603, 1604, 1606, 1608, 1610, 1612, 1614)** pertaining to a respective auction submission. Referring to Fig. 11, the auction management system revisits the auction sites **(506)** to extract updated auction information pertaining to the auction submissions **(1114)**. The auction management system then updates the auction monitoring report with the updated auction information **(1116)**. Referring to Fig. 12, the auction management system determines that a successful auction submission has resulted in a sale to a buyer **(1202)** and updates the auction management record for the successful auction submission with closed auction data associated with the sale **(1204-1212)**. See App. at 19/12-21/26.

Referring again to Figs. 16-17, the auction management system displays tracking fields **(1602)** in association with the auction management record for the successful auction submission identifying post-sale activities to be performed in connection with the sale; and alters the view of the tracking fields **(1702, 1704)** to indicate completion of the associated post-sale activities.

Claim 82:

Referring to Fig. 1, claim 82 is directed to a computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus, referred to as the auction consolidator **(20)** in the illustrated embodiment, to implement an auction management system **(10)**. See App. at 8/21-9/19. The full set of computer-executable instructions are described with reference to the flow charts of Figs. 5-15. See App. at 12/15-25/15.

Referring to Fig. 2, the auction management system creates an electronic inventory library comprising inventory records **(40)** corresponding to items to be offered for sale at auction; an electronic image library **(48)** comprising images of the items in which each image is configured to be reusable for creating the auction submissions; an electronic textual description library **(46)** of the items in which each textual description is configured to be reusable for creating the auction submissions. The auction management system also includes an electronic advertising template library **(50)** in which each advertising template is configured to be reusable for creating the auction submissions. See also Fig. 8 **(804-818)**. See App. at 9/20-10/18 and 15/22-16/26.

Referring to Fig. 3, the auction management system displays a menu-driven user interface configured to receive user commands creating the auction submission, which is shown conceptually as the finalizer **(28)**, the parser **(32)**, and the auction monitor **(32)**. Referring to Fig. 9, the auction management system receives user instructions **(902-918)** through the user interface to create a subject auction submission for a selected item. The user instructions include a selected inventory record in the inventory library, a selected image in the image library, a selected textual description in the textual description library, a selected advertising template in the advertising template library. The auction management system then automatically creates **(912-914)** the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template. See Fig. 9 and App. at 4/11-17; 16/27-17/24. See also Fig. 10, which indicates automatic ad creation **(1006)** and App. at 18/6-12.

The auction management system also obtains predefined entries, user input entries, or a combination of predefined and user input entries setting selected values for the auction parameters and displays the selected values in connection with corresponding auction parameters **(914)**. Once the user approves the ad, the auction management system store the subject auction submission in an electronic auction submission library comprising a plurality of previously posted auction submissions **(918)**. The auction management system then posts the subject auction submission to an electronic auction site to offer the item for sale at a subject auction **(504)**, which is shown in detail on Fig. 10 **(1002-1018)**. See App. 4/11-17 and 16/27-17/24.

ARGUMENT

I. Introduction

Applicant contends that the Final Rejection contains two clear errors: (1) the cited references fail to teach or suggest a number of the elements of the claimed invention, and the examiner's contentions that certain features are shown or suggested in certain references are inconsistent with the content of those references; and (2) the examiner has failed to give due consideration to the objective evidence of non-obviousness submitted by Applicant establishing the considerable commercial success of the claimed invention. The ultimate rejection of Applicant's argument in the Final Rejection is that, "[a]pplicant's analysis is based on what the references teach individually and not what the combination would have suggested to one of ordinary skill [citations omitted]." Applicant contends here on appeal, as it did before the Examiner in response to several examination papers including Office Action dated 24 May 2006, that the references cited by the Final Rejection, individually and in combination, fail to show or suggest all of the elements of the claimed invention. Rather than citing references that actually show or somehow suggest all of the elements recited in the claims, the Final Rejection tacitly admits that important features literally recited in the claims cannot be found in any cited reference individually, yet still contends that "the combination of would have suggested [the invention] to one of ordinary skill." Applicant believes this to be a legally impermissible conclusion.

More specifically, the Final Rejection appears to implicitly admit the fact that neither Rackson nor Conklin individually disclose or suggest important features literally recited in the claims including (a) the menu-driven utility for creating, storing and posting auction submissions, and (b) the auction monitoring report that includes alterable tracking fields for identifying the status of post-sale activities, yet (inexplicably in Applicant's view) nonetheless holds that the combination of these references renders the claimed invention obvious. Alternatively, if the Final Rejection is read to contend that either Rackson or Conklin show or suggest these features, then it is factually incorrect because neither reference contains any literal disclosure or suggestion of these features. In either case, the Final Rejection improperly reads major features of the claimed invention into the cited combination of references without any literal support

for those features within the references themselves. As such, the Final Rejection constitutes the impermissible application of "hindsight" in the examination process, as cautioned against by the Supreme Court in Graham v. John Deere, 383 US 1 (1968), as recently reinforced in KSR v. Teleflex, __US____ (2007), and as specifically proscribed by MPEP § 2143.03. See also, In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991).

II. Summary of Applicant's Contentions

Applicant agrees with the observation in the Final Rejection that Rackson discloses a type of auction consolidation engine and a type of auction monitoring report that does not include alterable tracking fields for indicating the status of post-sale activities, but contends that Rackson and the other references cited in the Final Rejection are only tangentially related to the other major elements of the claimed invention because none of the references are directed to or contain any relevant discussion of (a) a menu-driven utility for creating, storing and posting auction submissions, or (b) an auction monitoring report that includes alterable tracking fields for identifying the status of post-sale activities. Rather than discussing these features, Rackson describes a multi-auction service that is primarily concerned with the determination of an optimal bid price for an item that the user intends to purchase or sell at auction. See Rackson at col. 8, lines 6-17. Conklin is directed to a system for creating sponsored communities in a network environment to enable multivariate negotiations. See Conklin at col. 1, lines 7-10. And Robinson is directed to the creation of digital receipts for electronic transactions. See Robinson at col. 1, lines 7-11.

With respect to the Final Rejection, Applicant does not dispute the citation of Rackson as disclosing a type of auction consolidation engine and a type of auction monitoring report that does not include alterable tracking fiends for identifying the status of post-sale activities. Although these elements are not the main focus of Rackson, the reference does literally disclose these features, and Applicant accepts these citations as fairly taken. But Applicant maintains that Rackson does not fairly disclose or suggest the other features for which it has been cited, namely (a) an menu-driven utility for creating, storing and posting auction submissions; and (b) an auction monitoring report with alterable tracking fiends for identifying the status of post-sale activities. Applicant further submits that Conklin does not fairly disclose or suggest these features, including

the main feature for which it has been cited, the use of alterable tracking fields for indicating the status of post-sale activities. And Conklin certainly does not disclose or suggest the more specific subject matter for which it has been cited — an auction monitoring report that includes alterable tracking fields for indicating the status of post-sale activities associated with auctions.

Applicant also points out that the Final Rejection at par. 4 cites only Rackson for the elements of the menu-driven utility for creating, storing and posting auction submissions. Applicant contends that Rackson does not disclose or suggest this feature of the claimed invention. The Final Rejection at par. 4 also cites Rackson for an auction monitoring report without tracking fields for post-sale activities, further cites Conklin for the tracking fields in another context, and asserts that it would have been obvious to combine the auction monitoring report of Rackson with the tracking fields of Conklin. Applicant contends that Conklin does not disclose or suggest a monitoring report with alterable tracking fields for identifying the status of post-sale activities, and that the cited references do not suggest combining the auction monitoring report of Rackson with tracking features purportedly disclosed in Conklin to create an auction monitoring report that includes alterable tracking fields for indicating the status of post-sale activities associated with auctions. The Final Rejection at par. 5 cites Robinson for purchase and billing confirmation features cited in certain dependent claims, but Robinson is not cited as relevant to the auction monitoring report, menu-driven utility, or auction consolidation engine elements of the claimed invention. Applicant agrees that Robinson discloses purchase and billing confirmation features in a general commercial context, but contends that the cited combination of references does not disclose or suggest all of the element of the claimed invention, and that they do not provide a suggestion or motivation to combine the references to create the claimed invention.

Applicant therefore submits that the legal issues on appeal require the resolution of three substantive issues concerning the scope and content of the cited references:

(a) whether Rackson discloses or suggests a menu-driven utility for creating, storing and posting auction submissions as recited in Claim 82;

(b) whether Rackson in combination with Conklin disclose or suggest an auction monitoring report with alterable tracking fields for identifying the status of post-sale activities as recited in Claim 73; and

(c) whether Rackson in combination with Conklin discloses or suggest an auction management system that includes a menu-driven utility for creating, storing and posting auction submissions; an auction monitoring report with tracking fields for identifying the status of post-sale activities; and an auction consolidation engine as recited in Claim 67.

III. Comparison of Claims and Cited References

The claims of the subject application are directed to three separable features expressed in detailed claim language: (a) a menu-driven utility for creating, storing and posting auction submissions; (b) an electronic auction monitoring report for tracking the status of post-sale activities associated with auctions; and (c) an auction management system that includes the combination of a menu-driven utility for creating, storing and posting auction submissions; an electronic auction monitoring report for tracking the status of post-sale activities associated with auctions; and an auction consolidation engine. These features are claimed individually and in combination, and in literally explicit detail in the independent claims and in even more exacting detail in the dependent claims. Claim 82 is an independent claim directed to a menu-driven utility for creating, storing and posting auction submissions; Claim 73 is an independent claim directed to an auction monitoring report with alterable tracking fields for indicating the status of post-sale activities associated with auctions; and Claim 67 is an independent claim that recites a combination of the menu-driven utility, the auction monitoring report, and an auction consolidation engine. The dependent claims add additional detail and further distinguish the claimed invention.

A. Menu-Driven Utility for Creating Auction Submissions

Claim 82 is an independent claim directed to the menu-driven utility or creating, storing and posting auction submissions. The first clause of Claim 67 is also directed to this subject matter. Claim 82 reads:

> 82. A computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus to perform the steps of:

creating an electronic inventory library comprising inventory records corresponding to items to be offered for sale at auction;

creating an electronic image library comprising images of the items in which each image is configured to be reusable for creating the auction submissions;

creating an electronic textual description library of the items in which each textual description is configured to be reusable for creating the auction submissions;

creating an electronic advertising template library in which each advertising template is configured to be reusable for creating the auction submissions;

displaying a menu-driven user interface configured to receive user commands creating the auction submissions;

receiving user instructions through the user interface to create a subject auction submission for a selected item, the instructions comprising a selected inventory record in the inventory library, a selected image in the image library, a selected textual description in the textual description library, a selected advertising template in the advertising template library;

automatically creating the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template;

obtaining predefined entries, user input entries, or a combination of predefined and user input entries setting selected values for the auction parameters and displaying the selected values in connection with corresponding auction parameters;

storing the subject auction submission in an electronic auction submission library comprising a plurality of previously posted auction submissions; and

posting the subject auction submission to an electronic auction site to offer the item for sale at a subject auction.

The Final Rejection contends that his claim is rendered obvious by the following passage in Rackson:

The seller or the multi-auction service may specify the selling parameters of the offer to include, but are not limited to, some or all of the following: starting date and time; closing date and time; reserve price; a successful bid range; quantity of items; item description which may comprise in addition to text, graphic representation such as image file, photograph; audio file; video clip or other content that provides a representation of the item. These parameters may be defined by the seller with assistance by the multi-auction service or may be generated exclusively by the multi-auction service.

Rackson at col. 9, lines 24-35 (see also col. 3, lines 16-33); Final Rejection at par. 4. It should be noted that Conklin is only cited for auction status tracking and sending auction feedback messages, which leaves Rackson as the only citation for the elements of Claims 82. See the Final Rejection at par. 4.

As shown above, this passage from Rackson merely contains a general statement of the items that an auction participant may include in an auction submission and fails to disclose or suggest important parts the invention literally recited in Claim 82, such as the creation of electronic libraries of reusable components including an inventory library, an image library, an electronic textual description library, and an advertising template library. Claim 82 further recites a menu-driven user interface for assembling auction submissions from the reusable components by allowing the user identify a selected inventory record, a selected image, a selected textual description, and a selected advertising template from the appropriate libraries. The claim further recites that the menu-driven utility automatically creates the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template. The menu-driven utility then stores the resulting auction submission in an electronic auction submission library and posts it to an electronic auction site.

The cited passage in Rackson fails to disclose or suggest any of these literally claimed features, yet the Final Rejection contends that all of these features are disclosed or suggested by the passage cited above. This is not a fair reading of Rackson, and it is not a fair appraisal of what a person of ordinary skill would have gleaned from this reference. There is no disclosure in Rackson of the reusable component libraries or a menu-driven utility that automatically assembles, stores and posts auction submissions, which are required to establish a *prima facie* case of obviousness pursuant to MPEP § 2143.03 and the relevant statutory and case law. Accordingly, Applicant maintains that under the governing law and administrative regulations, Rackson does not render obvious the invention of Claim 82.

B. Auction Monitoring Report for Tracking Post-Sale Activities

The rejection of the auction monitoring report with alterable tracking fields for tracking the status of post sale activities as recited in Claim 73 is equally tenuous. The second clause of Claim 67 is also directed to this subject matter. Claim 73 reads:

> 73. A computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus to perform the steps of:
> creating a plurality of auction submissions for offering items for sale at auction;
> posting the auction submissions to one or more auction sites;
> displaying an auction monitoring report comprising a plurality of auction management records displayed within a common view, wherein each auction management record displays information pertaining to a respective auction submission;
> revisiting the auction sites to extract updated auction information pertaining to the auction submissions;
> updating the auction monitoring report with the updated auction information;
> determining that a successful auction submission has resulted in a sale to a buyer;
> updating the auction management record for the successful auction submission with closed auction data associated with the sale;
> displaying tracking fields in association with the auction management record for the successful auction submission identifying post-sale activities to be performed in connection with the sale; and
> altering the view of the tracking fields to indicate completion of the associated post-sale activities.

The Final Rejection cites figure 14 of Rackson as showing a type of auction monitoring report. A copy of this figure is included at the end of the Brief and prior to the appendices. Applicant agrees that figure 14 of Rackson can be fairly described as showing an auction monitoring report for a single item offered for sale at multiple auctions. Rackson also discloses a type of auction consolidation engine for continually updating the auction monitoring report with information from multiple auctions. But the auction monitoring report shown in figure 14 of Rackson does not include alterable tracking fields for identifying the status post-sale activities, and Rackson does not disclose or suggest using the report for the purpose of tracking the status of post-sale activities.

For the tracking fields, the Final Rejection cites figure 12 of Conklin, a copy of which is also included at the end of the Brief. Figure 12 of Conklin, however, has nothing to do with auctions or the tracking of post sale activities associated with auctions. Rather, Conklin figure 12 shows what can be fairly described as an order report for some type of order management system. The order report includes a list of orders and states that the user may click on a particular order to view the order in more details and access additional options. Importantly, Conklin does not contain any detailed description of figure 12 to further explain the operation of the order report or any additional features that can be accessed in connection with the order report. Appraising this figure fairly in view of what it literally shows, there are no fields in Conklin figure 12 that can be properly described as "alterable tracking fields to identify the status of post-sale activities" for any kind of sales, much less the post-sale activities associated with auctions.

Although the Final Rejection cites to variety of other portions of Conklin for other features, none of the cited passages show a report with alterable tracking fields for tracking and visually identifying the status of post sale activities. There is no disclosure in Conklin of any type of auction monitoring report or the use of alterable tracking fields for tracking the status of post sale activities. These features are simply not shown in Conlkin and there is no suggestion in Rackson, Conlkin or general knowledge of the art to create this type of auction management report. Rather, Applicant's invention is the only disclosure or suggestion in the record for an auction monitoring report with alterable tracking fields for tracking the status of post sale activities associated with auctions. Applicant therefore submits that under the governing law and administrative regulations, the combination of Rackson and Conklin does not render obvious the invention of Claim 73.

C. Auction Management System

As Rackson fails to disclose or suggest the menu-driven utility or creating, storing and posting auction submissions, and as Rackson in view Conklin fails to disclose or suggest the auction monitoring report with alterable tracking fields for post-sale activities, these references cannot be held to render obvious the combination of these features with an auction consolidation engine, as recited in Claim 67:

67. A computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus to implement an auction management system, comprising:

a menu-driven utility configured to assemble auction submissions from predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates, and to store the auction submissions in an electronic auction submission library;

an electronic auction monitoring report configured to display a plurality of auction management records within a common view, wherein each auction management record displays information pertaining to a respective auction submission and comprises tracking fields identifying post-sale activities to be performed in connection with the sale, wherein the view of each tracking field is alterable to indicate a completion status of its associated post-sale activity; and

an auction consolidation engine configured to post the auction submissions to one or more electronic auctions in accordance with the user-specified auction parameters, automatically revisit the auction sites, extract updated auction information pertaining to the auction submissions, update the auction monitoring report with the updated auction information, determine that a successful auction submission has resulted in a sale to a buyer, and update the auction management record for the successful auction submission with closed auction data associated with the sale.

There is no dispute over the fact that Rackson discloses a type of auction consolidation engine and a type of auction monitoring report that does not include alterable tracking fields for indicating the status of post sale activities. And there is no reasonable dispute over the fact that Rackson fails to disclose (a) a menu-driven utility for creating, storing and posting auction submissions, or (b) an electronic auction monitoring report for tracking the status of post-sale activities associated with auctions. Applicant contends that these features missing from Rackson are not shown or suggested by Conklin or any other reference or the general knowledge in the art, and that there is no teaching, suggestion, motivation or other rationale for finding these elements to be disclosed or suggested by the combination of Rackson and Conklin. There is no basis in the record, and it does not comport with the established principles of patent examination expressed in MPEP § 2143.03 and the statutes and court decisions that led to this regulation, for the Final Rejection to maintain that the combination of Rackson and Conklin renders obvious important claim elements that neither reference discloses or suggests individually. MPEP § 2143.03 requires a *prima*

facie case of obviousness in which at least one reference discloses or suggests each and very element of the claimed invention, and does condone the patent examiner finding the elements in a combination of reference without any literal support in the references themselves. Accordingly, Applicant respectfully submits that the combination of Rackson and Conklin does not render obvious the invention of Claim 67.

IV. Traversal of Alleged *Prima Facie* Case of Obviousness

Claims 67-69, 71-75, 77, 79-82 and 85 stand rejected based on Rackson in view of Conklin. Claims 70, 76, 78, 83 and 84 stand rejected based on Rackson and Conklin in further view of Robinson. The Final Rejection fails to establish a *prima facie* case of obviousness for the claimed invention because the prior art references, individually or when combined, do not teach or suggest all the claimed elements. Claims 73-81 are directed to an electronic auction monitoring report that includes alterable tracking fields identifying the status of post-sale activities associated with the sale, and Claims 82-85 are directed to a menu-driven utility for creating and storing auction submissions. Claim 67-72 are combination claims that recite both of these features in combination with an auction consolidation engine.

A. Menu-Driven Utility for Creating and Storing Auction Submissions

Paragraph 2 and the first portion of paragraph 4 (pages 5, 6) of the Final Rejection contend that Rackson in combination with Conklin (although Conklin is not explicitly cited in the element-by-element examination for any of the specific elements recited in Claim 82 and the upper portion of Claim 67) suggests the menu-driven utility for creating and storing auction submissions as recited in Claim 82 and the upper portion of Claim 67. However, neither Rackson nor Conklin describe or suggest a menu-driven utility for creating and storing auction submissions. Rackson describes a multi-auction service that is primarily concerned with the determination of an optimal bid price for an item that the user intends to purchase or sell at auction. See Rackson at col. 8, lines 6-17. The only description in Rackson that could be construed as relevant to a system for creating auction submissions states:

> The seller or the multi-auction service may specify the selling parameters of the offer to include, but are not limited to, some or all of the following: starting date and time; closing date and time; reserve price; a successful bid range; quantity of items; item description which may comprise in addition to text, graphic representation such as image file, photograph; audio file; video clip or other content that provides a representation of the item. These parameters may be defined by the seller with assistance by the multi-auction service or may be generated exclusively by the multi-auction service.

Rackson at col. 9, lines 24-35 (see also col. 3, lines 16-33). This passage merely states that the user may include the listed types of selling parameters in an auction submission. There is no description or suggestion in Rackson of a menu-driven utility for creating and storing auction submissions that includes "predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates" and the storage of the auction submissions in an "electronic auction submission library" as recited in Claims 67 and 82. Conklin does not describe an auction management system and, therefore, has no description that could be considered relevant to a process or system for creating auction submissions. Accordingly, neither reference discloses or suggests the menu-driven utility for creating and storing auction submissions that includes "predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates" and the storage of the auction submissions in an "electronic auction submission library" as recited on Claims 67 and 82

Claims 72 and 83-85 recite additional detail regarding the menu-driven utility for creating and storing auction submissions, including the creation and maintenance of electronic libraries containing reusable elements for creating auction submissions using the menu-driven utility. The reusable elements for creating auction submissions stored in the electronic libraries include inventory records, images of items, textual descriptions, and advertising templates. These claims further recite associated functionality for combining selected images, selected textual descriptions, and sets of auction parameters in a format defined by the selected advertisement template to create the auction submissions. Because neither Rackson nor Conklin address the use of a menu-driven utility for creating and storing auction submissions, these references,

individually or in combination, fail to disclose or suggest these additional features of the claimed invention.

B. Auction Monitoring Report with Tracking Fields for Post-Sale Activities

Paragraph 4 of the Final Rejection on the bottom of page 6 through page 7 contends that the combination of Rackson and Conklin suggests an electronic auction monitoring report that displays a plurality of auction management records within a common view that includes tracking fields that are alterable to indicate a completion status of post-sale activities, as recited in Claim 73 and the lower portion of Claim 67. The only auction monitoring report disclosed in Rackson is shown in figure 14 and described at col. 25, line 55 – col. 26, line 29. The display panel 500 in figure 14 shows auction monitoring information for an item (element 502) offered for sale at multiple auctions. The purpose of the panel 500 is to display the status of the multiple auctions, highlight the user's bid, and show the rules (element 510) used to compute a time and value for a suggested next bid (element 560). Thus, the panel 500 shown in figure 14 of Rackson does not show "a plurality of auction management records within a common view, wherein each auction management record displays information pertaining to a respective auction submission" as recited in Clams 67 and 73, but instead shows information pertaining to a single item offered for sale at multiple auctions.

In addition, Rackson fails to disclose or suggest any type of alterable tracking fields for identifying the status of post-sale activities. Paragraph 4 of the Final Rejection asserts that Conklin teaches the tracking fields at figure 12 and contains additional citations to figures 1i, 7, 8, 12, 13, 15a and col. 24, lines 18-41 for other elements of the claimed invention. This contention is plainly false, however, because Conklin does not disclose or suggest the elements for which it has been cited. Applicant respectfully requests through this appeal a fair reading of Conklin, especially at figure 12, and a reasoned appraisal of what this reference actually teaches. Although Applicant has repeatedly pointed out to the patent examiner that Conklin does not show the elements for which it has been cited, the examiner has persisted in making the factually incorrect citations in the Final Rejection and thereby forced the present appeal.

It should be noted that the detailed description in Conklin only describes the figures 1a through figure 5b, and therefore contains no detailed description of the cited figures 7, 8, 12, 13 or 15a, which, in any event, do not address an auction creation or

management system. Rather, figures 1i and 7 are flow charts concerning the closing of a negotiation using a shared document, figure 8 is a flow chart regarding the shipping of ordered products, figure 12 shows a list of orders, figure 13 appears to be a form showing the status of an order, and figure 15 shows a payment approval form. Conklin at page 24, lines 18-41 merely describes figure 1i, which concerns the closing of a negotiation as memorialized in a shared document. Conklin therefore fails to disclose or suggest any type of consolidated auction monitoring report, and certainly does not disclose or suggest the use of alterable tracking fields for visually indicating the status of post-sale activities associated with close auctions. Accordingly, neither Rackson nor Conklin, individually or in combination, disclose or suggest an auction monitoring report that displays a plurality of auction management records within a common view that includes tracking fields that are alterable to indicate a completion status of its post-sale activities as recited in Claims 73 and 67.

Claims 68-71 are directed to additional elements of the auction monitoring report and associated activities including the receipt of user input altering the view a tracking item to indicate completion of a post-sale activity (Claims 68, 74); automatically performing a post-sale operation in accordance with settings data and altering an associated tracking item to indicate completion of a post-sale activity (Claims 69, 75); automatically sending a purchase notification message as a type of post-sale operation (Claims 70, 76); automatically sending an auction feedback message as a type of post-sale operation (Claims 71, 77); automatically creating and storing a billing record associated with a closed auction (Claim 78); revisiting the auction sites to extract updated auction information in response to a user request for access to the auction monitoring report (Claim 79); displaying each auction management record as a row displaying the information pertaining to its respective auction submission and the tracking fields are displayed as icons (Claim 80); and including tracking fields in the auction monitoring report for purchaser notification, payment received, auction item shipped, and payment received (Claim 81). Because neither Rackson nor Conklin address the use of tracking fields in an auction monitoring report, these references, individually or in combination, fail to disclose or suggest these additional features of the claimed invention.

Paragraph 5 of the Final Rejection further cites Robinson in the rejection of Claims 70, 76, 78, 83 and 84 as allegedly showing a system that sends a bill or post-sale receipt to a purchaser. However, Robinson is directed to the use of encrypted digital receipts, and fails to disclose or suggest any type of auction management system. There is no teaching in Robinson of a menu-driven utility for creating and storing auction submissions or an auction monitoring report that displays a plurality of auction management records within a common view and includes tracking fields for indicating the status of post-sale activities. Accordingly, the combination Rackson and Conklin in further view of Robinson does not create a *prima facie* case of obviousness for any of Claims 70, 76, 78, 83 and 84 because none of these references disclose or suggest a menu-driven utility for creating and storing auction submissions or an auction monitoring report that displays a plurality of auction management records within a common view that includes tracking fields for indicating the status of post-sale activities.

V. Evidence Rebutting Alleged *Prima Facie* Case of Obviousness

Page 4 of the Final Rejection fails to give due consideration to the Declaration of Daris McCullough under 37 CFR § 1.132 establishing the considerable commercial success of the present invention. Mr. McCullough's Declaration documents the progressively increasing sales of Applicant and further states that, "[v]irtually all of Applicant's auction management system since inception of the company is claimed in the subject application, and Applicant's auction management system as described and claimed in the subject patent application is the only feature distinguishing it from other auction management system." Applicant has, therefore, established both a high degree of commercial success and a nexus between this success and the claimed invention. This evidence rebuts the *prima facie* case of obviousness allegedly established by the Official Action and must be given full consideration. MPEP §§ 716.03; 1504.03; Graham v. John Deere, 383 US 1 (1968); Litton System, Inc. v. Whirlpool Corp., 728 F.2d 1423 (Fed. Cir. 1984). Although the Final Rejection discusses the Declaration, it merely asserts the conclusion that the evidence is "not persuasive" without providing any supporting rationale or analysis.

Applicant contends that the commercial success proven by the Declaration is persuasive, especially in view of the apparent failure of the Final Rejection to establish a *prima facie* case of obviousness based on a conventional understanding of MPEP §

2143.03. That is, Applicant contends that the objective evidence of non-obviousness should be considered especially persuasive where, as here, the Final Rejection tacitly admits that important features literally recited in the claims cannot be found in any cited reference, yet still contends that the combination of cited references "would have suggested [the claimed invention] to one of ordinary skill." This type of analysis almost necessarily relies on hindsight, because the present application is the only source in the record for the features of the claimed invention that cannot be found in cited references individually. It is therefore particularly appropriate to credit the objective evidence of non-obviousness in the present case, because the *prima facie* case of obviousness is lacking or, at the very least, extremely tenuous.

Respectfully submitted,

/Michael J. Mehrman/

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EXCERPTS FROM CITED REFERENCES

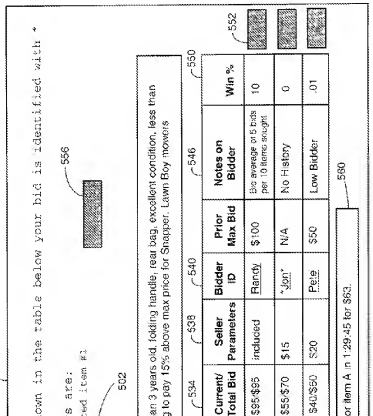

Figure 14

RACKSON, FIGURE 14

FIG. 12

ADMINISTRATION

Below is a list of orders. Click on any order to view the order in more detail and for further options

ID	STATUS	Buyer Order NUMBER	BUYER	PAYMENT	ITEMS	TOTAL
Test Account						
1	In Negotiation	DA01	ABC	Letter Of Credit	1	$ 897.00
12	Incomplete	DA02	Sadjdk	Letter Of Credit	2	$ 2290.00
Exports Inc.						
2	Incomplete	EX01	Tool Inc.	Wire Transfer	1	$12500.00
3	Incomplete	EX02	company	Letter Of Credit	1	# 12500.00
4	Incomplete	EX03	hjk	Wire Transfer	1	$12500.00
5	Incomplete	EX04	hjk	Letterr Of Credit	1	$12500.00
6	In Negotiation	EX05	TradeAccess Inc.	Letter Of Credit	1	$25000.00
7	In Negotiation	EX06	x	Letter of Credit	1	$25000.00
8	In Negotiation	EX07	TradeAccess Inc.	Letter Of Credit	1	$25000.00
9	In Negotiation	EX08	Buyers Inc.	Letter Of Credit	1	$25000.00
10	Incomplete	EX09	Baskets Inc.	Credit Card	1	$ 200.00
11	In Negotiation	EX10	EMI	Letter Of Credcit	1	$25000.00

CONKLIN, FIGURE 12

CLAIMS APPENDIX

67. A computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus to implement an auction management system, comprising:

a menu-driven utility configured to assemble auction submissions from predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates, and to store the auction submissions in an electronic auction submission library;

an electronic auction monitoring report configured to display a plurality of auction management records within a common view, wherein each auction management record displays information pertaining to a respective auction submission and comprises tracking fields identifying post-sale activities to be performed in connection with the sale, wherein the view of each tracking field is alterable to indicate a completion status of its associated post-sale activity; and

an auction consolidation engine configured to post the auction submissions to one or more electronic auctions in accordance with the user-specified auction parameters, automatically revisit the auction sites, extract updated auction information pertaining to the auction submissions, update the auction monitoring report with the updated auction information, determine that a successful auction submission has resulted in a sale to a buyer, and update the auction management record for the successful auction submission with closed auction data associated with the sale.

68. The computer-readable medium of claim 67, wherein the auction consolidation engine is configured to receive user input altering the view of a selected tracking field to indicate completion of its associated post-sale activity.

69. The computer-readable medium of claim 67, wherein the auction consolidation engine is configured to:

store settings data;

automatically perform a predefined post-sale operation in connection with the sale in accordance with the settings data associated with the auction management record for the successful auction submission; and

automatically display a corresponding tracking field in a state indicating completion of the post-sale operation.

70. The computer-readable medium of claim 69, wherein the predefined post-sale operation comprises sending a purchase notification message to the buyer.

71. The computer-readable medium of claim 69, wherein the predefined post-sale operation comprises sending an auction feedback message to a host of the auction that resulted in the sale.

72. The computer-readable medium of claim 67, wherein the menu-driven utility comprises functionality operative for:

creating an electronic inventory library comprising inventory records corresponding to items to be offered for sale at auction;

creating an electronic image library comprising images of the items in which each image is configured to be reusable for creating the auction submissions;

creating an electronic textual description library of the items in which each textual description is configured to be reusable for creating the auction submissions;

creating an electronic advertising template library in which each advertising template is configured to be reusable for creating the auction submissions;

displaying a menu-driven user interface configured to receive user commands creating the auction submissions;

receiving user instructions through the user interface to create a subject auction submission for a selected item, the instructions comprising a selected inventory record in the inventory library, a selected image in the image library, a selected textual description in the textual description library, a selected advertising template in the advertising template library;

automatically creating the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template; and

obtaining predefined entries, user input entries, or a combination of predefined and user input entries setting selected values for the auction parameters and displaying the selected values in connection with corresponding auction parameters.

73. A computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus to perform the steps of:

creating a plurality of auction submissions for offering items for sale at auction;

posting the auction submissions to one or more auction sites;

displaying an auction monitoring report comprising a plurality of auction management records displayed within a common view, wherein each auction management record displays information pertaining to a respective auction submission;

revisiting the auction sites to extract updated auction information pertaining to the auction submissions;

updating the auction monitoring report with the updated auction information;

determining that a successful auction submission has resulted in a sale to a buyer;

updating the auction management record for the successful auction submission with closed auction data associated with the sale;

displaying tracking fields in association with the auction management record for the successful auction submission identifying post-sale activities to be performed in connection with the sale; and

altering the view of the tracking fields to indicate completion of the associated post-sale activities.

74. The computer-readable medium of claim 73, further comprising the step of receiving user input altering the view of a selected tracking field to indicate completion of its associated post-sale activity.

75. The computer-readable medium of claim 73, further comprising the step of responding to the sale by:

storing settings data;

automatically performing a predefined post-sale operation in accordance with the settings data associated with the auction management record for the successful auction submission; and

automatically displaying a corresponding tracking field in a state indicating completion of the post-sale operation.

76. The computer-readable medium of claim 75, wherein the predefined post-sale operation comprises sending a purchase notification message to the buyer.

77. The computer-readable medium of claim 75, wherein the predefined post-sale operation comprises sending an auction feedback message to a host of the auction that resulted in the sale.

78. The computer-readable medium of claim 73, wherein the predefined post-sale operation comprises creating and storing a billing record containing the auction closed data.

79. The computer storage medium of claim 73, further comprising the step of revisiting the auction sites to extract updated auction information in response to a user request for access to the auction monitoring report.

80. The computer storage medium of claim 73, wherein each auction management record comprises a row displaying the information pertaining to its respective auction submission and the tracking fields are displayed as icons.

81 The computer storage medium of claim 73, wherein tracking fields include tracking fields for purchaser notification, payment received, auction item shipped, and payment received.

82. A computer-readable medium storing computer-executable instructions for causing a computer-controlled apparatus to perform the steps of:

creating an electronic inventory library comprising inventory records corresponding to items to be offered for sale at auction;

creating an electronic image library comprising images of the items in which each image is configured to be reusable for creating the auction submissions;

creating an electronic textual description library of the items in which each textual description is configured to be reusable for creating the auction submissions;

creating an electronic advertising template library in which each advertising template is configured to be reusable for creating the auction submissions;

displaying a menu-driven user interface configured to receive user commands creating the auction submissions;

receiving user instructions through the user interface to create a subject auction submission for a selected item, the instructions comprising a selected inventory record in the inventory library, a selected image in the image library, a selected textual description in the textual description library, a selected advertising template in the advertising template library;

automatically creating the subject auction submission by combining the selected image, the selected textual description, and a set of auction parameters in a format defined by the selected advertisement template;

obtaining predefined entries, user input entries, or a combination of predefined and user input entries setting selected values for the auction parameters and displaying the selected values in connection with corresponding auction parameters;

storing the subject auction submission in an electronic auction submission library comprising a plurality of previously posted auction submissions; and

posting the subject auction submission to an electronic auction site to offer the item for sale at a subject auction.

83. The computer-readable medium of claim 82, further comprising the steps of:

determining that the subject auction submission has resulted in a sale to a purchaser;

obtaining closed auction data associated with the sale;

creating a billing record comprising the closed auction data;

transmitting the billing record to the purchaser; and

storing the billing record in a billing record library.

84. The computer-readable medium of claim 83, further comprising the steps of:

creating a sales record comprising the closed auction data;

receiving information regarding shipping and payment in association with the sale; and

entering the shipping and payment information into the sales record; and

storing the sales record in a sales record library.

85. The computer-readable medium of claim 82, further comprising the steps of:

creating an auction monitoring report configured to display a plurality of auction management records within a common view, wherein each auction management record displays information pertaining to a respective auction submission and comprises tracking fields identifying post-sale activities to be performed in connection with the sale, wherein the view of each tracking field is alterable to indicate a completion status of its associated post-sale activities; and

automatically revisiting the auction sites to extract updated auction information pertaining to the auction submissions, updating the auction monitoring report with the updated auction information, determining that a successful auction submission has resulted in a sale to a buyer, and updating the auction management record for the successful auction submission with closed auction data associated with the sale.

EVIDENCE APPENDIX

Patents

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
Gerald H. Ablan	)
	) Art Unit: 3621
Serial No.: 09/644,411	)
	) Examiner: C. Hewitt II
Filed: August 23, 2000	)
	)
For: Auction Management System	)

DECLARATION OF DARIS MCCULLOUGH UNDER 37 C.F.R. §§ 1.132

I, Daris McCullough, declare and state under oath as follows:

1. I am over 21 years of age, of sound mind and body, a joint inventor of the subject matter claimed in the above-identified patent application, and the Chief Operating Officer of the assignee of that application, Auctionworks, Inc. (d/b/a Marketworks) ("Marketworks").

2. This Declaration is submitted in connection with the referenced patent application for the purpose of documenting the commercial success of the system and methods described and claimed in that application in support of patentability of the invention claimed in the subject patent application.

3. As the Chief Operating Officer of Marketworks, I have personal knowledge of the sales of this organization by virtue of my personal review of the relevant corporate records, which I conducted for the purpose of preparing this Declaration.

4. In the year 2000, the subject patent application was filed and the subject matter described and claimed in the application went into commercial operation.

5. Since that time, Marketworks has experienced significant and consistent growth in its sales revenue, as shown below:

   2000: $26,680
   2001: $718,405
   2002: $2,742,248
   2003: $4,500,594
   2004: $6,672,450

6. Applicant's entire auction management system since inception of the company is claimed in the subject application, and Applicant's auction management system as described and claimed in the subject patent application is the only feature distinguishing it from other auction management system.

7. As a result, the high level of commercial success experienced by Marketworks is entirely attributable to features claimed in the subject patent application.

I declare under penalty of perjury that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statement were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Denis McCullough

Executed on:

RELATED PROCEEDINGS INDEX

No decisions have been rendered by either board or court having appropriate jurisdiction, other than Examiners in the Art Group listed above, in this case.